IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

FAITHFUL FROGGERS, LLC
An Ohio limited liability company
7593 N. Mannheim Ct.
Hudson, OH 44236
Plaintiff,

vs.

SweetFrog Enterprises, LLC
10800 Midlothian Turnpike, Ste.300
Richmond, VA 23235, and

SFF, LLC,
(same address)
Defendants,

CASE NO. 5:14-cv-2774

JUDGE: JOHN R. ADAMS

PLAINTIFF'S FIRST AMENDED COMPLAINT

Now comes the Plaintiff, Faithful Froggers, LLC ("Plaintiff"), by and through counsel, and for its First Amended Complaint states as follows:

COUNT I (Violation of RC 1334)

1. Plaintiff Faithful Froggers, LLC (referred to herein as "FF") is the franchisee under a Franchise Agreement with Defendant SFF, LLC executed effective December 2, 2013, a copy of which is submitted with this Complaint ("the Franchise Agreement"). The Franchise Agreement relates to the operation by FF of a retail outlet for the sale of soft-serve yogurt and other products in Brunswick, Ohio, under the tradename "SweetFrog".

2. Defendant SFF, LLC (referred to herein as "Franchisor"), is a Virginia limited liability company which sells franchises in Ohio and various other states in the U.S., and is the franchisor under the Franchise Agreement.

3. Defendant SweetFrog Enterprises, LLC (referred to herein as "Guarantor") is a Virginia limited liability company which is the parent entity of Franchisor, and Guarantor is obligated to guarantee the obligations of Franchisor under the Franchise Agreement pursuant to a Guarantee of Performance, a copy of which is submitted with this Complaint ("the Guarantee").

4. The transaction described in the Franchise Agreement constituted the sale of a "Business Opportunity Plan" as defined in Section 1334.01(D) of the Ohio Business Opportunity Purchasers Protection Act, RC Sections 1334.01, et seq ("OBOPPA").

5. In connection with the Franchise Agreement, Franchisor violated the disclosure and other requirements contained in RC 1334.02-1334.06. Without limiting the foregoing, Franchisor failed to comply with the requirements of OBOPPA requiring a 5-day right to cancel,

and Franchisor made financial performance representations concerning sales, costs or income, which violated the prohibitions contained in RC Section 1334.03.

6. The failure by Franchisor to comply with the disclosure and other obligations contained in RC 1334.02-06 constituted violations of OBOPPA, entitling Plaintiff to the remedies provided in RC Section 1334.09, namely rescission, minimum statutory damages, triple damages, and attorney fees.

7. Plaintiff has incurred losses and damages estimated at $530,000 as a consequence of executing and performing under the Franchise Agreement. Plaintiff now seeks to rescind the Agreement, and to recover three times the amount of Plaintiff's damages plus attorney fees, as permitted by RC Section 1334.09.

COUNT II – FRAUD

8. Plaintiff reavers all previous paragraphs as if rewritten here.

9. In connection with the aforementioned sale of the franchise and execution of the Franchise Agreement, Franchisor provided Plaintiff with various projections of sales, costs and profits for Plaintiff's proposed new business which it knew were false or misleading. Such projections were provided by Franchisor with the intention of causing Plaintiff to enter into the Franchise Agreement. Plaintiff justifiably relied on such disclosures, and Plaintiff was thereby induced to enter into the Franchise Agreement. Plaintiff subsequently lost amounts estimated at $530,000 as a result of entering into the Franchise Agreement.

COUNT III – CLAIMS AGAINST GUARANTOR

10. Plaintiff reavers all previous paragraphs as if fully rewritten here.

11. Upon information and belief, Franchisor may not possess the financial resources to satisfy any judgment which may be rendered against it in this matter. In connection with the sale of the franchise to FF, Franchisor was required by federal regulations to provide either its own audited financial statements, or the audited financial statements of a parent entity which agreed to guarantee the obligations of Franchisor under the Franchise Agreement. Franchisor chose to provide the financial statements of its parent entity, the Guarantor, and also to provide the Guarantee. Plaintiff therefore asks the court for a declaration that the Guarantor is jointly and severally liable for any judgment rendered against Franchisor in this matter.

12. Upon information and belief, Franchisor and Guarantor share the same physical premises and use a single mailing address, and certain officers, employees or agents of Franchisor are also employed as officers, employees or agents of Guarantor. Guarantor further allowed its financial statements to be used as the basis for Plaintiff's decision to purchase a franchise from Franchisor. Because Guarantor and Franchisor both operated through common officers, employees or agents, Guarantor knew or should have known of the specific fraudulent representations made to Plaintiff to induce Plaintiff to purchase the franchise. Accordingly, Guarantor is liable to Plaintiff for fraud, either jointly with Franchisor, or primarily, as an aider and abettor of the commission of such fraud.

13. In addition to the sanctions and remedies provided in RC 1334.09, RC Section 1334.99 specifies that violation of Sections 1334.02 to 1334.06 constitutes a criminal violation, with a category of misdemeanor of the first degree. Such violations therefore indisputably constitute "illegal acts". Guarantor is therefore liable to Plaintiff for the above-referenced conduct of its subsidiary, Franchisor, because with respect to Franchisor (a) Guarantor exercised sufficient control that Franchisor had no separate mind, will or existence of its own, (b)

Guarantor exercised such control to commit fraud or illegal acts, and (c) such fraud or illegal acts caused injury or unjust loss to Plaintiffs.

COUNT IV – REQUEST FOR DECLARATORY JUDGMENT

AS TO VENUE AND CHOICE OF LAW

14. Plaintiff reavers all previous paragraphs as if fully rewritten here.

15. Sections 23.B and 23.C. of the Franchise Agreement address issues of venue and choice of law, respectively, with regard to claims relating to the franchise relationship between the parties. These sections specify venue in the location of Franchisor's principal business location (i.e., Richmond, Virginia), and application of Virginia law. However, OBOPPA was amended in 2012 to require application of Ohio law and an Ohio forum to any dispute arising under the Act. Among other things, the amendment added language stating that the protections of OBOPPA represent "a fundamental public policy for this state", and invalidating "any venue or choice of law provision that deprives a purchaser who is an Ohio resident of the benefit of [the protections of OBOPPA]". Plaintiff therefore asks the court for a determination that (a) Ohio law applies to any determination of Plaintiff's rights under OBOPPA, (b) any proceeding to determine Plaintiff's rights under OBOPPA must be held at a location to be determined inside the state of Ohio, and (c) any provisions in the Franchise Agreement specifying out of state venue or choice of law are contrary to Ohio's public policy and are void and unenforceable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against the Defendants named herein jointly and severally, as follows:

A. A determination that Plaintiff is entitled to rescind its Franchise Agreement with Franchisor without further liability, and to be free of any and all restrictions contained in such Agreement.

B. A determination that Plaintiff is entitled to the return of all amounts previously paid by Plaintiff to Franchisor, howsoever characterized, including any administrative fees, franchise fees, royalty fees, advertising fees or payments to purchase required goods and services from Franchisor.

C. A determination that Plaintiff is entitled to recover such amounts as are necessary to reimburse Plaintiff for losses estimated at $530,000 which Plaintiff incurred in the establishment and operation of its business, and generally to be restored to the status quo prior to the execution of its agreement with Franchisor.

D. A determination that Plaintiff is entitled to recover the greater of $10,000 or three times the amount of its actual damages to be determined at trial.

E. A determination that Plaintiff is entitled to recover its attorney fees, together with interest and costs of suit.

F. A determination that Guarantor is jointly and severally liable to Plaintiff for actions of Franchisor described in this Complaint, or alternatively that Guarantor is primarily liable to Plaintiff as an aider and abettor of Franchisor's tortious conduct.

G. A determination that Ohio law applies to any claim of Plaintiff alleging violation of OBOPPA.

H. A determination that any proceeding to determine Plaintiff's rights under OBOPPA must be held at a location inside the state of Ohio.

Respectfully submitted,

/s/ Stanley M. Dub

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